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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES LOWELL MORGAN  
Inmate Booking No. 03-4977-01

Plaintiff,

vs.

UNNAMED DEFENDANTS,

Defendants.

Civil No. 13cv1825 WQH (NLS)

**ORDER:**

**(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED *IN*  
*FORMA PAUPERIS*; and**

**(2) SUA SPONTE DISMISSING  
COMPLAINT PURSUANT TO  
28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

22 Plaintiff, currently incarcerated at the George Bailey Detention Facility located in San  
23 Diego, California, has filed a civil rights action pursuant to 42 U.S.C. § 1983. In addition,  
24 Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C.  
25 § 1915(a) [ECF No. 3].

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1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the United States,  
 3 except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C.  
 4 § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the  
 5 plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*  
 6 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to proceed IFP  
 7 remain obligated to pay the entire fee in installments, regardless of whether their action is  
 8 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2).

9 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.  
 10 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to  
 11 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account shows that he has  
 12 insufficient funds from which to pay filing fees at this time. *See* 28 U.S.C. § 1915(b)(4).  
 13 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [ECF No. 3] and assesses no  
 14 initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance of the  
 15 filing fee mandated shall be collected and forwarded to the Clerk of the Court pursuant to the  
 16 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

17 **II. SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) and § 1915A**

18 The PLRA also obligates the Court to review complaints filed by all persons proceeding  
 19 IFP and by those, like Plaintiff, who are "incarcerated or detained in any facility [and] accused  
 20 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or  
 21 conditions of parole, probation, pretrial release, or diversionary program," "as soon as  
 22 practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these  
 23 provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion  
 24 thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from  
 25 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203  
 26 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443,  
 27 446 (9th Cir. 2000) (§ 1915A).

1 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte  
 2 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is  
 3 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,  
 4 324 (1989). However 28 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing  
 5 an IFP or prisoner's suit make and rule on its own motion to dismiss before effecting service of  
 6 the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection  
 7 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint  
 8 that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)  
 9 (discussing 28 U.S.C. § 1915A).

10 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
 11 allegations of material fact and must construe those facts in the light most favorable to the  
 12 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)  
 13 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, the Court’s  
 14 duty to liberally construe a pro se’s pleadings, *see Karim-Panahi v. Los Angeles Police Dept.*,  
 15 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important in civil rights cases.” *Ferdik v.*  
 16 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

17 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person  
 18 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived  
 19 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the  
 20 United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on*  
 21 *other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d  
 22 1350, 1354 (9th Cir. 1985) (en banc).

23 Plaintiff’s Complaint is devoid of any coherent allegations. For example, Plaintiff states  
 24 in his Complaint, “no excuse pardon me turkey” and admonishes that “punishment will be given  
 25 out at the flag pole.” (Compl. at 1-2.) A complaint is frivolous “where it lacks an arguable basis  
 26 either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Based on the statements  
 27 in the Complaint, the Court finds the claims in Plaintiff’s Complaint to be frivolous because  
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1 they lack even “an arguable basis either in law or in fact,” and appear “fanciful,” “fantastic,” or  
 2 “delusional.” *Neitzke*, 490 U.S. at 325, 328.

3 Accordingly, Plaintiff’s entire Complaint must be dismissed as frivolous. *See* 28 U.S.C.  
 4 § 1915(e)(2)(B) & 1915A(b).

### 5 **III. CONCLUSION AND ORDER**

6 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

7 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is  
 8 **GRANTED.**

9 2. The Watch Commander, or his designee, shall collect from Plaintiff’s trust account  
 10 the \$350 balance of the filing fee owed in this case by collecting monthly payments from the  
 11 account in an amount equal to twenty percent (20%) of the preceding month’s income and  
 12 forward payments to the Clerk of the Court each time the amount in the account exceeds \$10 in  
 13 accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY  
 14 IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

15 3. The Clerk of the Court is directed to serve a copy of this Order on Watch  
 16 Commander, George Bailey Detention Facility, 446 Alta Road, Suite 5300, San Diego,  
 17 California 92158.

18 **IT IS FURTHER ORDERED** that:

19 4. The case is **DISMISSED** without prejudice as frivolous. *See* 28 U.S.C. §  
 20 1915(e)(2)(b) & § 1915A(b). In addition, the Court finds further amendment would be futile.  
 21 *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (denial of a leave to amend  
 22 is not an abuse of discretion where further amendment would be futile); *see also Robinson v.*  
 23 *California Bd. of Prison Terms*, 997 F. Supp. 1303, 1308 (C.D. Cal. 1998) (“Since plaintiff has  
 24 not, and cannot, state a claim containing an arguable basis in law, this action should be dismissed  
 25 without leave to amend; any amendment would be futile.”) (citing *Newland v. Dalton*, 81 F.3d  
 26 904, 907 (9th Cir. 1996)).

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1           5.     **IT IS FURTHER CERTIFIED** that an IFP appeal from this final order of  
2 dismissal would not appear to be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3). *See*  
3 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th  
4 Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal would not be  
5 frivolous).

6           **IT IS SO ORDERED.**

7  
8 DATED: \_\_\_\_\_

9/10/13

  
HON. WILLIAM O. HAYES  
United States District Judge